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EX PARTE – VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services;* WC Docket No. 03-133

Dear Ms. Dortch:

Consistently for months in the above-referenced docket, General Communication, Inc. ("GCI") and numerous other parties have urged the Federal Communications Commission ("FCC" or "Commission") to end the illegal behavior of the Petitioner, AT&T, by swiftly rejecting AT&T's Petition for Declaratory Ruling ("Petition") in which it seeks a finding that its prepaid calling card service is an "enhanced" service subject exclusively to interstate jurisdiction. In this submission, GCI urges the FCC to reject any attempts by AT&T to now seek a Further Notice of Proposed Rulemaking ("FNPRM") for the "new variation" of prepaid card service, as recently described by AT&T. As GCI explains more fully below, a FNPRM is unnecessary for several reasons. Additionally, AT&T's self-described "new" prepaid card service includes nothing more than the same commercial that the card has included from the outset of this proceeding. GCI urges the FCC to stay the course, reject the Petition, and stop any further harm by AT&T.

Issuing a FNPRM in this matter in order to gain further comment in a docket already heavily papered and subject to much debate is contrary to the public interest and unnecessary on the facts. If the Commission elects to keep even part of this debate open any longer and seek additional comment on AT&T's latest proposed offering, the FCC will cede its regulatory prerogatives to rationally address intercarrier compensation reform. Critically, the issues raised in this proceeding are not matters just relevant to calling cards, but implicate questions central to the current intercarrier compensation and universal service debates. A FNPRM will invite further game playing by other carriers relevant to the payment of access charges and USF contributions. There is no reason why others carriers, following AT&T's lead, cannot add similar copy-cat options to their own calling card products (or any other services) as an excuse to withhold such payments. As a result, the Commission should send an unequivocal message that if a party is uncertain about the law, the proper course is to file a declaratory ruling. A carrier's

claimed confusion or creative lawyering does not alleviate it from complying with the law as it exists today and as the Commission interprets it. For all of these reasons, the FCC must take prompt and decisive action with respect to this matter. A release of a FNPRM only provides an incentive to other carriers to follow similar bait and switch tactics of providing services it self-describes as "enhanced" in order to avoid their legal obligations.

GCI also urges the FCC not to be sidetracked by what AT&T has recently self-described as its "new variation" of calling card. AT&T has raised nothing new or different from the service described in the original Petition that would warrant a FNPRM. Specifically, AT&T states now that its new variation of calling card offers other capabilities such as: "(i) additional information about the card distributor's business, (ii) additional information about the card distributor's website, [ ] (iii) additional information about travel, photo processing or other services available from the card distributor", [1] as well as instructions regarding how to add minutes to the card.[2] Although the commercial in the "new variation" of AT&T's card is now longer than "Thank You for Shopping at ABC Store" and separated by voice prompts guised as "options", the information is still just simply a commercial – which the card holder does not seek.[3]

Indeed, AT&T has conceded from the outset of this case, that the ad is not of the user's choosing, but of the service provider's and card distributor's choosing, to the cardholder.[4] This is a critical distinction from the *Talking Yellow Pages* case. Unlike *Talking Yellow Pages* or other interactive offerings, the subscriber to the AT&T prepaid calling card service does not solicit information, there is no information transmitted by the subscriber to solicit the ad, and thus, there is no change in the content of subscriber information. It is merely the delivery of an ad, now broken-up by alleged "options", the content of which is selected by AT&T's retailer, who is in no way, shape, or form a party to the communication underway between the calling card subscriber and the called party. Thus, AT&T's claim that "providing stored advertisements to a caller is an enhanced service" ignores a critical feature of the *Talking Yellow Pages* Order – that the caller dials the Talking Yellow Pages number for the express purpose of accessing the stored information it receives.[5] If this latest argument is not rejected (consistent with standing precedent), what would stop other calling card providers – or any other service provider – following AT&T's lead, from selling recorded message space in the call set-up portion of the card (similar to broadcast ad space) to inform the caller that "this call is brought you by your favorite fast food restaurant" in order to avoid access and USF payments?

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[1] Letter from Judy Sello, Senior Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-133 (Nov. 22, 2004) ("AT&T Nov. 22, 2004 Letter") at 2.
[2] *Id.* at 3.
[3] This fact was echoed by several parties throughout this docket, that a consumer purchases a calling card to make voice calls, not to hear commercials. *See, e.g.,* Letter from Stephen Earnest, Regulatory Counsel, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-133 (Dec. 8, 2004) at 8.
[4] *AT&T Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services,* WC Docket No. 03-133, (filed May 15, 2003) ("AT&T Petition") at 6.
[5] *In the Matter of Northwestern Bell Telephone Company Petition for Declaratory Ruling,* 2 FCC Rcd 5986, (Oct. 5, 1987) *(Talking Yellow Page)* at ¶ 2.

Equally as critical, much of the information AT&T suggests makes the calling card service "enhanced" is information that is provided as part of the call set-up portion of the call. The FCC has determined that such "[c]ommunications between a subscriber and the network itself (e.g. for call setup, call routing, and call cessation) are not considered enhanced services."[6] Indeed, information regarding how to add minutes to the card (often found on the plastic calling card itself, on the packaging surrounding the card, at the checkout register, or by calling the carrier's customer service number) or the retailer's website address (found on every product the retailer sells and all advertising for the retailer) is the same type of information that is currently offered by several other providers in the recorded message during their calling card set-up. The imposition of this advertising information no more transforms the calling card service into an enhanced service than would printing this same information onto the face of the card. As such, AT&T is unable to make a credible argument that the inclusion of the information in its "new variation" of its prepaid calling card service makes it "enhanced".

The FCC has the information before it at this time to reject AT&T's Petition and any other add-on variation since. A FNRPM is an unnecessary step that will only lead to further delay and game playing. The FCC must put a stop to AT&T's illegal behavior. Alternatively, should the FCC deem it necessary to conduct further debate surrounding AT&T's claimed "new variation" of prepaid calling card service, the risk for such activities should fall squarely on AT&T while it fulfills its presumptive legal obligation to make the appropriate access charge and USF payments. Subjecting the entire industry to further delay through a FNRPM while AT&T continues to enjoy a windfall by sidestepping its legal obligations results in widespread harm to other carriers while undermining existing Commission policy and law. Such a move should not be tolerated.

In accordance with the Commission's rules, a copy of this letter is being filed in the above-captioned proceeding. If you have any questions, please contact the undersigned at (202) 457-8815.

Sincerely,

/s/

Lisa R. Youngers
Federal Regulatory Attorney

cc: (via electronic mail)

Christopher Libertelli	Jeff Carlisle
Scott Bergmann	Tamara Preiss
Dan Gonzalez	Steve Morris
Jennifer Manner	
Jessica Rosenworcel	

[6] *In the Matter of Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling that AT&T's InterSpan Frame Relay Service Is a Basic Service, and AT&T Petition for Declaratory Ruling That All IXCs be Subject to the Commission's Decision on the IDMCA Petition*, 10 FCC Rcd. 13, 717, (Oct. 16, 1995) at ¶ 14.